Senate Bill No. 28

CHAPTER 12

An act to add Section 42301.15 to, to add Chapter 7 (commencing with Section 39910) to Part 2 of Division 26 of, and to add and repeal Section 42314.3 of, the Health and Safety Code, and to amend Sections 25514, 25521, 25523, 25531, and 25552 of, and to add and repeal Sections 25519.5 and 25550.5 of, the Public Resources Code, and to add Article 3.5 (commencing with Section 353.1) to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, relating to the energy emergency, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 2001. Filed with Secretary of State May 22, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 28, Sher. Energy siting of power plants: unemployment insurance.

(1) Existing law contains various provisions relative to air pollution control.

This bill would require the State Air Resources Board, on or before July 1, 2002, in consultation with air pollution control districts, air quality management districts and the Independent System Operator, to establish a schedule for the retrofit of certain electrical generation facilities that would require completion of the retrofits by December 31, 2004, except as specified. The bill also would require the state board, on or before July 1, 2001, to implement a program for the banking, trading, and purchasing of emission reduction credits for electrical generating facilities.

The bill would, until January 1, 2004, authorize an applicant for a permit for an electrical generating facility to pay an emissions offset fee to the appropriate air pollution control district or air quality management district for expenditure by the district to purchase offsets for that facility.

(2) Existing law provides for the restructuring of California's electric power industry so that the price for the generation of electricity is determined by a competitive market.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify all sites and related facilities for thermal powerplants in the state, including a new site and related facility or a change or addition to an existing facility. The

Energy Commission is required to prepare a final report and written decision after a public hearing on the application for the powerplant.

Existing law requires the Energy Commission to request the appropriate local, regional, state, and federal agencies to make comments and recommendations about the design, operation, and location of facilities.

This bill would require a public agency to use the staff report submitted for a public hearing on an application in the same manner as an environmental impact report or negative declaration for the site or facilities, except as specified.

This bill would require, until January 1, 2004, each local government agency reviewing the application to file a preliminary list of issues regarding the design, operation, location, and financial impact of the facility with the Energy Commission within 45 days of the date the application for certification is deemed filed. The bill would require the local jurisdiction to provide a final list of those issues no later than 100 days after the application for certification is deemed filed. To the extent that the bill would require the local jurisdiction to provide a new program or higher level of service, it would impose a state-mandated local program.

This bill would require the final report prepared by the Energy Commission to additionally include findings and conclusions as to whether increased property taxes due to the construction of the project are sufficient to support needed local improvements and public services required to serve the project.

This bill would require the written decision prepared by the Energy Commission after the public hearing to include a discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

This bill would clarify that decisions of the Energy Commission are subject to judicial review by the Supreme Court of California.

(3) Existing law authorizes the Energy Commission to establish a process for the expedited review of applications to construct and operate powerplants and thermal powerplants and related facilities.

This bill would require the Energy Commission, until January 1, 2004, also to establish a process for the expedited review of a repowering project.

This bill would additionally delete the deadline for completed applications for an expedited decision on simple cycle thermal powerplants.

(4) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and other specified entities.

This bill would require the commission to require each electrical corporation under the operational control of the Independent System Operator as of January 1, 2001, to modify tariffs so that all customers that install new distributed energy resources, as defined, in accordance with specified criteria are served under rates, rules, and requirements identical to those of a customer within the same rate schedule that does not use distributed energy resources, and to withdraw any provisions in otherwise applicable tariffs that activate other tariffs, rates, or rules if a customer uses distributed energy resources. The bill would require each electrical corporation, as part of its distribution planning process, to consider nonutility owned distributed energy resources as a possible alternative to investments in its distribution system in order to ensure reliable electric service at the lowest possible cost. The bill would require the commission, in establishing the rates under the provisions of the bill, to create a firewall that segregates distribution cost recovery, as described.

The bill would require a local publicly owned electric utility, as defined, or a local publicly owned utility otherwise providing electrical service, to undertake a review of its rates, tariffs, and rules, as prescribed, and to hold at least one noticed public meeting to solicit public comment on the review and any recommended changes.

The bill would require the commission to require each electrical corporation to establish new tariffs on or before January 1, 2003, for customers using distributed energy resources. The bill would continue to subject certain distributed energy resources, after January 1, 2003, to preexisting tariffs under the bill, until June 1, 2011 or, for specified installations, until June 1, 2006. The bill would require the commission to prepare and submit to the Legislature, on or before June 1, 2002, a report describing its proposed methodology for determining the new rates and the process by which it will establish those rates.

The bill would require customers that install distributed energy resources to annually report to the commission specific information about the resources. The bill would require the commission, in consultation with air pollution control districts and air quality management districts and the Energy Commission, to evaluate that information, and, within two years of the effective date of the bill, to prepare and submit to the Governor and the Legislature a report recommending any changes to the above provisions that the commission determines to be necessary.

Because a violation of a requirement of the commission is a crime, this bill would impose a state-mandated local program by creating a new crime.

(5) The bill would authorize a gas corporation public utility, until June 1, 2002, to exercise the power of eminent domain for the purpose of competing with another entity in the offering of natural gas and services related to natural gas. The bill would prohibit the Public Utilities Commission from making a finding on a petition filed by a gas corporation for those purposes.

(6) The bill would appropriate not more than $3,250,000 from the General Fund to the commission for expenditure, until January 1, 2005, in accordance with a prescribed schedule.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(8) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 7 (commencing with Section 39910) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

CHAPTER 7. EXPEDITED AIR QUALITY IMPROVEMENT PROGRAM FOR ELECTRICAL GENERATION

39910. The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that the state board establish a unified, coordinated, and expedited process for districts to retrofit electrical generating facilities in a manner that protects public health and the environment and that complies fully with applicable federal and state statutes and regulations.

39915. On or before July 1, 2002, the state board, in consultation with air quality management districts, air pollution control districts, and the Independent System Operator, shall establish a schedule for the retrofit of electric generation facilities pursuant to retrofit criteria and

procedures established under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) or this division. The schedule shall require completion of any mandated retrofits by December 31, 2004, or such later date as the state board, in consultation with the Independent System Operator, air pollution control districts, air quality management districts, and the owners and operators of electrical generating facilities determines is necessary to maintain electric system reliability. Nothing in this section is intended to require the retrofit of a generation facility that could not be required to be retrofitted by an air quality management district or air pollution control district under the law in effect on the effective date of the act adding this chapter during the 2001-02 First Extraordinary Session. The state board shall suspend the deadline for the completion of a retrofit of an electrical generation unit scheduled pursuant to this section if it determines all of the following:

(a) The owner of the generation unit proposes to replace or repower the generation unit in a manner that complies with all applicable laws and regulations.

(b) The owner has filed the necessary applications for permits for such replacement or repower prior to the suspension of the deadline for the completion of the required retrofits.

(c) The owner is diligently proceeding with the replacement or repower of the unit and the state board determines that the replacement or repower will be completed.

39920. On or before July 1, 2001, the state board shall implement a program for tracking the emission reduction credits made available by the program required under Section 39915, and for facilitating the banking, trading, and purchasing of those credits in order to expedite the construction of new, clean generating facilities in the state. The state board shall establish criteria for the development of a state emission reduction credits bank, which shall ensure that a specified percentage of emission reduction credits created pursuant to section 39915 be contributed to the bank for the purpose of making emission reduction credits available for new, clean generation capacity.

SEC. 2. Section 42301.15 is added to the Health and Safety Code, to read:

42301.15. Each district shall adopt an expedited program for the permitting of standby electrical generation facilities, distributed generation facilities, geothermal facilities, including wells, and, where applicable, natural gas transmission facilities, that ensures those facilities will be operated in a manner that protects public health and air quality. Upon request by a district, the Independent System Operator and the Public Utilities Commission shall provide any information necessary, as determined by the district, to implement this section.

SEC. 3. Section 42314.3 is added to the Health and Safety Code, to read:

42314.3. (a) The Legislature finds and declares all of the following:

(1) There is an urgent need to facilitate the siting of the cleanest and least polluting new electrical generation and repowering, as defined in subdivision (i) of Section 25550.5 of the Public Resources Code in the state in order to displace older and more polluting electrical generation.

(2) Certain areas of the state currently lack sufficient air emissions offsets needed to site clean new generation and repowering, as defined in paragraph (1).

(3) The purpose of this section is to provide a mechanism to provide needed offsets for clean new electrical generation and repowering, as defined in paragraph (1), for new facilities constructed during the period of energy emergency currently being experienced in the state.

(4) Nothing in this section is intended, in any manner, to limit or abridge the responsibilities and obligations of any party under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), as that act existed on January 1, 2001, including, but not limited to, the requirement that emissions offsets be enforceable as established pursuant to Section 173(a)(1) of that act (42 U.S.C. Sec. 7503(a)(1)(A)), and that offsets be obtained by the time a source is to commence operation pursuant to Section 173 (a)(1)(A) of that act (42 U.S.C. Sec. 7503(a)(1)(A)).

(b) Each district shall identify and make available to the public emission reduction credits that may be purchased by applicants for electrical generation facilities and used to offset emissions from those facilities pursuant to this section. Each district shall adopt, in a public hearing, standards for the implementation of this section, including, but not limited to, quantification protocols, emissions baselines, antibacksliding provisions, and monitoring, recordkeeping, reporting, and testing requirements, to establish that the offsets made available pursuant to this section are quantifiable, verifiable, enforceable, real, and surplus.

(c) To the extent permitted under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), including, but not limited to, those sections of the act referenced under paragraph (4) of subdivision (a), in lieu of obtaining air emission offsets, an applicant for a permit for an electrical generating facility may pay an emissions offset fee to a district for expenditure by the district to purchase offsets for that facility. The applicant may post a bond in an amount sufficient to cover the cost of the required emissions offsets, provided that bond shall only be issued by an admitted surety for the benefit of, and held by, the district.

(d) Prior to commencement of operation, the owner or operator of the facility shall obtain any required emissions offsets or a portion of the

required emissions offsets and shall forfeit a proportionate amount of the offset fee or bond to the district in an amount determined by the district to be sufficient to acquire and hold that portion of the required emissions offsets not obtained by the applicant. Any forfeited funds shall be used by the district to purchase offsets for the facility in the applicable air basin prior to the commencement of operation of the facility.

(e) In expending emissions offset fees, a district shall give first priority to obtaining offsets from stationary sources that have emissions comparable to those emissions that the electrical generation facility will emit and shall meet all standards regarding proximity of such offsets established under state and federal law, and district rules and regulations. To the extent stationary source offsets are not available, the district shall expend offset fees to obtain emissions reductions from other sources of a type and in an amount equivalent to those offsets which would otherwise be required to be obtained by the facility in order to operate. However, a district may expend funds for offsets from mobile or areawide sources only after making a public determination that sufficient reductions from stationary sources cannot be secured prior to commencement of operation of the project.

(f) Prior to accepting the payment of an emissions offset fee pursuant to this section, and not less than 11 months prior to commencement of the electrical generation facility, the governing board or the air pollution control officer of a district shall hold a duly noticed public hearing that meets all of the following conditions:

(1) Notice of the hearing shall be published at least 30 days prior to the date of the hearing in all newspapers of general circulation in the area to be affected by the electrical generation facility's emissions.

(2) At the hearing, the applicant demonstrates, to the satisfaction of the governing board or the air pollution control officer, that emissions offsets are not available to the applicant in the district, or that the offsets are available only at a cost which, for all practical purposes, make the offsets unavailable to the applicant.

(3) At the hearing, the district identifies those offsets that it will purchase for use by the applicant and finds that those offsets comply with the requirements of this section and with all applicable requirements of state and federal law and district rules and regulations, including, but not limited to, requirements that those offsets are quantifiable, verifiable, enforceable, real, permanent, and surplus and that they are, measured from a verified air emissions baseline.

(4) At the hearing, the district establishes the amount of emissions offset fees or the portion of the bond to be paid by the applicant. The amount shall be sufficient to obtain the equivalent amount of offsets as would otherwise be required to be obtained by the applicant, and may

include an additional amount not to exceed 3 percent to cover the district's administrative costs.

(g) Not less than six months after the hearing conducted pursuant to subdivision (f), the district shall publish and make available to the public and the applicant the types and quantities of offsets that it has secured.

(h) This section may be utilized by a thermal powerplant subject to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code. However, to the extent this section is utilized by a thermal powerplant subject to that chapter, the thermal powerplant shall be required to demonstrate compliance with this section in a manner consistent with the requirements of Section 25523 of the Public Resources Code.

(i) A district may, by regulation, suspend or limit the applicability of this section for any period of time or with respect to a particular electrical generation facility if the district determines that it would interfere with attainment or maintenance of state or federal ambient air quality standards, or to the extent it determines that adequate offsets are available at a reasonable price. District rules governing notice required for adoption or amendment of regulations shall apply to this subdivision.

(j) (1) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

(2) However, except as otherwise provided in this section, the repeal of this section may not affect any electrical generation facility for which offsets have been obtained pursuant to this section prior to the date of the repeal.

SEC. 4. Section 25514 of the Public Resources Code is amended to read:

25514. After conclusion of the hearings held pursuant to Section 25513 and no later than 300 days after the filing of the notice, a final report shall be prepared and distributed. The final report shall include, but not be limited to, all of the following:

(a) The findings and conclusions of the commission regarding the conformity of alternative sites and related facilities designated in the notice or considered in the notice of intention proceeding with both of the following:

(1) The 12-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (e) of Section 25305, except as provided in Section 25514.5.

(2) Applicable local, regional, state, and federal standards, ordinances, and laws, including any long-range land use plans or guidelines adopted by the state or by any local or regional planning agency, which would be applicable but for the exclusive authority of the

commission to certify sites and related facilities; and the standards adopted by the commission pursuant to Section 25216.3.

(b) Any findings and comments submitted by the California Coastal Commission pursuant to Section 25507 and subdivision (d) of Section 30413.

(c) Any findings and comments submitted by the San Francisco Bay Conservation and Development Commission pursuant to Section 25507 of this code and subdivision (d) of Section 66645 of the Government Code.

(d) The commission's findings on the acceptability and relative merit of each alternative siting proposal designated in the notice or presented at the hearings and reviewed by the commission. The specific findings of relative merit shall be made pursuant to Sections 25502 to 25516, inclusive. In its findings on any alternative siting proposal, the commission may specify modification in the design, construction, location, or other conditions which will meet the standards, policies, and guidelines established by the commission.

(e) Findings and conclusions with respect to the safety and reliability of the facility or facilities at each of the sites designated in the notice, as determined by the commission pursuant to Section 25511, and any conditions, modifications, or criteria proposed for any site and related facility proposal resulting from the findings and conclusions.

(f) Findings and conclusions as to whether increased property taxes due to the construction of the project are sufficient to support needed local improvements and public services required to serve the project.

SEC. 5. Section 25519.5 is added to the Public Resources Code, to read:

25519.5. (a) Each local government agency reviewing an application pursuant to subdivision (f) of Section 25519 shall file a preliminary list of issues regarding the design, operation, location, and financial impacts of the facility with the commission no later than 45 days after the date an application for certification is deemed filed for purposes of Section 25522 and shall provide a final list of those issues with the commission no later than 100 days after the application for certification is deemed filed. Nothing in this section may be construed to limit the right of a city, county, or city and county, to comment on an application filed pursuant to this chapter or to act as an intervenor or other party to a proceeding established pursuant to this chapter.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

SEC. 6. Section 25521 of the Public Resources Code is amended to read:

25521. No earlier than 90 nor later than 240 days after the date of the filing of an application, the commission shall commence a public hearing or hearings on the application in Sacramento, San Francisco, Los Angeles, or San Diego, whichever city is nearest the proposed site. Additionally, the commission may hold a hearing or hearings in the county in which the proposed site and related facilities are to be located. The commission hearings shall provide a reasonable opportunity for the public and all parties to the proceeding to comment upon the application and the commission staff assessment and shall provide the equivalent opportunity for comment as required pursuant to Division 13 (commencing with Section 21000). Consistent with the requirements of this section, the commission shall have the discretion to determine whether or not a hearing is to be conducted in a manner that requires formal examination of witnesses or that uses other similar adjudicatory procedures.

SEC. 7. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2 (commencing with Section 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d) (1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to

Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies, prior to the licensing of the project by the commission, that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant within the time required by the district's rules or unless the applicable air pollution control district or air quality management district certifies that the applicant requires emissions offsets to be obtained prior to the commencement of operation consistent with Section 42314.3 of the Health and Safety Code and prior to commencement of the operation of the proposed facility. The commission shall require as a condition of certification that the applicant obtain any required emission offsets within the time required by the applicable district rules, consistent with any applicable federal and state laws and regulations, and prior to the commencement of the operation of the proposed facility.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) In the case of a site and related facility using resource recovery (waste-to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(g) In the case of a facility, other than a resource recovery facility subject to subdivision (f), specific conditions requiring the facility to be monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

(h) A discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

SEC. 8. Section 25531 of the Public Resources Code is amended to read:

25531. (a) The decisions of the commission on any application for certification of a site and related facility are subject to judicial review by the Supreme Court of California.

(b) No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a decision of the commission subject to judicial review.

(c) Subject to the right of judicial review of decisions of the commission, no court in this state has jurisdiction to hear or determine any case or controversy concerning any matter which was, or could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of any thermal powerplant except to enforce compliance with the provisions of a decision of the commission.

(d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

(1) If the commission requires, pursuant to subdivision (a) of Section 25528, as a condition of certification of any site and related facility, that the applicant acquire development rights, that requirement conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought by the applicant to acquire the development rights.

(2) If the commission certifies any site and related facility, that certification conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought to acquire the site and related facility.

(e) No decision of the commission pursuant to Section 25516, 25522, or 25523 shall be found to mandate a specific supply plan for any utility as prohibited by Section 25323.

SEC. 9. Section 25550.5 is added to the Public Resources Code, to read:

25550.5. (a) Notwithstanding subdivision (a) of Section 25522 and Section 25540.6, the commission shall establish a process to issue its final decision on an application for certification for the repowering of a thermal powerplant and related facilities within 180 days after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and that the project will comply with all applicable standards, ordinances, regulations, and statutes. For purposes of this section, filing has the same meaning as in Section 25522.

(b) The repowering of a thermal powerplant and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission by regulation, including the information required for permitting by each local, state, and regional agency that would have jurisdiction over the proposed repowering of a thermal powerplant and related facilities but for the exclusive jurisdiction of the commission and the information required for permitting by each federal agency that has jurisdiction over the proposed repowering of a thermal powerplant and related facilities.

(c) After an application is filed under this section, the commission shall not be required to issue a final decision on the application within 180 days if it determines there is substantial evidence in the record that the thermal powerplant and related facilities may result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, regulation, or statute. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.

(d) For an application that the commission accepts under this section, any local, regional, or state agency that would have had jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, shall provide its final comments, determinations, or opinions within 100 days after the filing of the application. The regional water quality control board, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.

(e) The repowering of a thermal powerplant and related facilities that demonstrate superior environmental or efficiency performance improvement shall receive first priority in review by the commission.

(f) With respect to the repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has contracted with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(h) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(i) For purposes of this section, ''repowering'' means a project for the modification of an existing generation unit of a thermal powerplant that meets all of the following criteria:

(1) The project complies with all applicable requirements of federal, state, and local laws.

(2) The project is located on the site of, and within the existing boundaries of, an existing thermal facility.

(3) The project will not require significant additional rights-of-way for electrical or fuel-related transmission facilities.

(4) The project will result in significant and substantial increases in the efficiency of the production of electricity, including, but not limited to, reducing the heat rate, reducing the use of natural gas, reducing the use and discharge of water, and reducing air pollutants emitted by the project, as measured on a per kilowatthour basis.

(j) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 10. Section 25552 of the Public Resources Code is amended to read:

25552. (a) The commission shall implement a procedure, consistent with Division 13 (commencing with Section 21000) and with the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), for an expedited decision on simple cycle thermal powerplants and related facilities that can be put into service on or before December 31, 2002, including a

procedure for considering amendments to a pending application if the amendments specify a change from a combined cycle thermal powerplant and related facilities to a simple cycle thermal powerplant and related facilities.

(b) The procedure shall include all of the following:

(1) A requirement that, within 15 days of receiving the application or amendment to a pending application, the commission shall determine whether the application is complete.

(2) A requirement that, within 25 days of determining that an application is complete, the commission, or a committee of the commission, shall determine whether the application qualifies for an expedited decision pursuant to this section. If an application qualifies for an expedited decision pursuant to this section, the commission shall provide the notice required by Section 21092.

(c) The commission shall issue its final decision on an application, including an amendment to a pending application, within four months from the date on which it deems the application or amendment complete, or at any later time mutually agreed upon by the commission and the applicant, provided that the thermal powerplant and related facilities remain likely to be in service on or before December 31, 2002.

(d) The commission shall issue a decision granting a license to a simple cycle thermal powerplant and related facilities pursuant to this section if the commission finds all of the following:

(1) The thermal powerplant is not a major stationary source or a modification to a major stationary source, as defined by the federal Clean Air Act, and will be equipped with best available control technology, in consultation with the appropriate air pollution control district or air quality management district and the State Air Resources Board.

(2) The thermal powerplant and related facilities will not have a significant adverse effect on the environment or the electrical system as a result of construction or operation.

(3) With respect to a project for a thermal powerplant and related facilities reviewed under the process established by this section, the applicant has contracted with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the thermal powerplant.

(e) In order to qualify for the procedure established by this section, an application shall satisfy the requirements of Section 25523, and include a description of the proposed conditions of certification that will do all of the following:

(1) Assure that the thermal powerplant and related facilities will not have a significant adverse effect on the environment as a result of construction or operation.

(2) Assure protection of public health and safety.

(3) Result in compliance with all applicable federal, state, and local laws, ordinances, and standards.

(4) A reasonable demonstration that the thermal powerplant and related facilities, if licensed on the expedited schedule provided by this section, will be in service before December 31, 2002.

(5) A binding and enforceable agreement with the commission, that demonstrates either of the following:

(A) That the thermal powerplant will cease to operate and the permit will terminate within three years.

(B) That the thermal powerplant will be recertified, modified, replaced, or removed within a period of three years with a cogeneration or combined-cycle thermal powerplant that uses best available control technology and obtains necessary offsets, as determined at the time the combined-cycle thermal powerplant is constructed, and that complies with all other applicable laws, ordinances, and standards.

(6) Where applicable, that the thermal powerplant will obtain offsets or, where offsets are unavailable, pay an air emissions mitigation fee to the air pollution control district or air quality management district based upon the actual emissions from the thermal powerplant, to the district for expenditure by the district pursuant to Chapter 9 (commencing with Section 44275) of Part 5 of Division 26 of the Health and Safety Code, to mitigate the emissions from the plant. To the extent consistent with federal law and regulation, any offsets required pursuant to this paragraph shall be based upon a 1:1 ratio, unless, after consultation with the applicable air pollution control district or air quality management district, the commission finds that a different ratio should be required.

(7) Nothing in this section shall affect the ability of an applicant that receives approval to install simple cycle thermal powerplants and related facilities as an amendment to a pending application to proceed with the original application for a combined cycle thermal powerplant or related facilities.

(f) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date except that the binding commitments in paragraph (5) of subdivision (e) shall remain in effect after that date.

SEC. 11. Article 3.5 (commencing with Section 353.1) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 3.5. Distributed Energy Resources

353.1. As used in this article, ''distributed energy resources'' means any electric generation technology that meets all of the following criteria:

(a) Commences initial operation between May 1, 2001, and June 1, 2003, except that gas-fired distributed energy resources that are not operated in a combined heat and power application must commence operation no later than September 1, 2002.

(b) Is located within a single facility.

(c) Is five megawatts or smaller in aggregate capacity.

(d) Serves onsite loads or over-the-fence transactions allowed under Sections 216 and 218.

(e) Is powered by any fuel other than diesel.

(f) Complies with emission standards and guidance adopted by the State Air Resources Board pursuant to Sections 41514.9 and 41514.10 of the Health and Safety Code. Prior to the adoption of those standards and guidance, for the purpose of this article, distributed energy resources shall meet emissions levels equivalent to nine parts per million oxides of nitrogen, or the equivalent standard taking into account efficiency as determined by the State Air Resources Board, averaged over a three-hour period, or best available control technology for the applicable air district, whichever is lower, except for distributed generation units that displace and therefore significantly reduce emissions from natural gas flares or reinjection compressors, as determined by the State Air Resources Control Board. These units shall comply with the applicable best available control technology as determined by the air pollution control district or air quality management district in which they are located.

353.3. (a) The commission shall require each electrical corporation under the operational control of the Independent System Operator as of January 1, 2001, to modify its tariffs so that all customers installing new distributed energy resources in accordance with the criteria described in Section 353.1 are served under rates, rules, and requirements identical to those of a customer within the same rate schedule that does not use distributed energy resources, and to withdraw any provisions in otherwise applicable tariffs that activate other tariffs, rates, or rules if a customer uses distributed energy resources.

(b) To qualify for the tariffs described in subdivision (a), each customer with distributed energy resources that meet the criteria of Section 353.1 shall participate in a real-time metering and pricing program, when these programs become available, in which rates for any energy purchased from the electrical corporation reflect the actual cost

to the electrical corporation of energy it purchases at the time it is consumed by the customer. Prior to the time these programs become available, the customer shall participate in a time-of-use pricing tariff. On or before December 31, 2001, the commission shall adopt a real time pricing tariff for the purpose of this section.

(c) Except as specified in Section 353.7, customers may not be subject to the application of additional rates or tariffs solely because of their use of distributed energy resources to serve onsite loads or over-the-fence transactions allowed under Sections 216 and 218.

353.5. Each electrical corporation, as part of its distribution planning process, shall consider nonutility owned distributed energy resources as a possible alternative to investments in its distribution system in order to ensure reliable electric service at the lowest possible cost.

353.7. Notwithstanding Section 353.3, nothing in this article may result in any exemption from reasonable interconnection charges, lead to any reduction in contributions by each customer class to public purpose programs funded under Section 399.8, or relieve any customer of any obligation determined by the commission to result from participation in the purchase of power through the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code.

353.9. In establishing the rates required under this article, the commission shall create a firewall that segregates distribution cost recovery so that any net costs, taking into account the actual costs and benefits of distributed energy resources, proportional to each customer class, as determined by the commission, resulting from the tariff modifications granted to members of each customer class may be recovered only from that class.

353.11. A local publicly owned electric utility, as defined in subdivision (d) of Section 9604, or a local publicly owned utility otherwise providing electrical service, shall review at the earliest practicable date its rates, tariffs, and rules to identify barriers to and determine the appropriate balance of costs and benefits of distributed energy resources in order to facilitate the installation of these resources in the interests of their customer-owners and the state, and shall hold at least one noticed public meeting to solicit public comment on the review and any recommended changes. However, notwithstanding any other provision of this article, such an entity has the sole authority to undertake such a review and to make modifications to its rates, tariffs, and rules as the governing body of that utility determines to be necessary.

353.13. (a) The commission shall require each electrical corporation to establish new tariffs on or before January 1, 2003, for

customers using distributed energy resources, including, but not limited to, those which do not meet all of the criteria described in Section 353.1. However, after January 1, 2003, distributed energy resources that meet all of the criteria described in Section 353.1 shall continue to be subject only to those tariffs in existence pursuant to Section 353.3, until June 1, 2011, except that installations that do not operate in a combined heat and power application will be subject to those tariffs in existence pursuant to Section 353.3 only until June 1, 2006. Those tariffs required pursuant to this section shall ensure that all net distribution costs incurred to serve each customer class, taking into account the actual costs and benefits of distributed energy resources, proportional to each customer class, as determined by the commission, are fully recovered only from that class. The commission shall require each electrical corporation, in establishing those rates, to ensure that customers with similar load profiles within a customer class will, to the extent practicable, be subject to the same utility rates, regardless of their use of distributed energy resources to serve onsite loads or over-the-fence transactions allowed under Sections 216 and 218. Customers with dedicated facilities shall remain responsible for their obligations regarding payment for those facilities.

(b) The commission shall prepare and submit to the Legislature, on or before June 1, 2002, a report describing its proposed methodology for determining the new rates and the process by which it will establish those rates.

353.15. (a) In order to evaluate the efficiency, emissions, and reliability of distributed energy resources with a capacity greater than 10 kilowatts, customers that install those resources pursuant to this article shall report to the commission, on an annual basis, all of the following information, as recorded on a monthly basis:

(1) Heat rate for the resource.

(2) Total kilowatthours produced in the peak and off-peak periods, as determined by the ISO.

(3) Emissions data for the resource, as required by the State Air Resources Board or the appropriate air quality management district or air pollution control district.

(b) The commission shall release the information submitted pursuant to subdivision (a) in a manner that does not identify the individual user of the distributed energy resource.

(c) The commission, in consultation with the State Air Resources Board, air quality management districts, air pollution control districts, and the State Energy Resources Conservation and Development Commission, shall evaluate the information submitted pursuant to subdivision (a) and, within two years of the effective date of the act adding this article, prepare and submit to the Governor and the

Legislature a report recommending any changes to this article it determines necessary based upon that information.

SEC. 12. (a) Notwithstanding Section 625 of the Public Utilities Code, from the effective date of this section to June 1, 2002, inclusive, a gas corporation public utility may exercise the power of eminent domain, including, but not limited to, any authority provided by Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure, to condemn any property for the purpose of competing with another entity in the offering of natural gas and services related to natural gas.

(b) The Public Utilities Commission may not make a finding on a petition or complaint pending on the effective date of this section that was filed pursuant to Section 625 of the Public Utilities Code by a gas corporation public utility to condemn any property for the purpose of competing with another entity in the offering of natural gas and services related to natural gas. The Public Utilities Commission shall dismiss the petition or complaint.

(c) This section shall become inoperative on June 1, 2002, and, as of January 1, 2003, is repealed, unless a later enacted statute that is enacted before January 1, 2003, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 13. The sum of not more than three million two hundred fifty thousand dollars ($3,250,000) is hereby appropriated from the General Fund to the State Energy Resources Conservation and Development Commission for expenditure, until January 1, 2005, for the following purposes:

(a) Three million dollars ($3,000,000) to provide assistance to cities and counties to expedite the review and analysis of applications for electrical generating facilities which will assist the state in meeting its urgent energy needs and ensuring system reliability. The moneys available pursuant to this subdivision shall not be used to supplant funding available to a city or county through the exercise of its existing fee authority.

(b) Not more than two hundred fifty thousand dollars ($250,000) to contract or conduct a study, in consultation with the Orange County Sanitation District, of the remedies to mitigate effects of shoreline water contamination located in the vicinity of the City of Huntington Beach to be conducted concurrently with the Huntington Beach Shoreline Contamination Study conducted by the Orange County Sanitation District.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because

in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the rapid, unforeseen shortage of electric supply and energy available in the state, which endangers the health, welfare, and safety of the people of this state, it is necessary for this act to take effect immediately.

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